(14)

No. 04-885

Supreme Court, U.S.
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In The Supreme Court of the United States

CENTRAL VIRGINIA COMMUNITY COLLEGE,
VIRGINIA MILITARY INSTITUTE,
NEW RIVER COMMUNITY COLLEGE, and
BLUE RIDGE COMMUNITY COLLEGE,

Petitioners,

v.

BERNARD KATZ, Liquidating Supervisor for
Wallace's Bookstores, Inc.,

Respondent.

On Writ Of Certiorari To The United States Court Of Appeals For The Sixth Circuit

JOINT APPENDIX

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Petition For Certiorari Filed December 28, 2004
Certiorari Granted April 4, 2005

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TABLE OF CONTENTS

Page

Relevant Docket Entries 1

Adversary Complaint filed February 5, 2003 against Virginia Military Institute 2

Adversary Complaint filed February 11, 2003 against Central Virginia Community College 11

Adversary Complaint filed February 14, 2003 against Blue Ridge Community College 18

Amended Complaint filed February 25, 2003 against New River Community College 28

May 19, 2003 Order denying sovereign immunity to Virginia Military Institute 36

May 19, 2003 Order denying sovereign immunity to Central Virginia Community College 38

May 19, 2003 Order denying sovereign immunity to Blue Ridge Community College 40

May 19, 2003 Order denying sovereign immunity to New River Community College 42

August 5, 2003 Order of the United States District Court for the Eastern District of Kentucky denying sovereign immunity and affirming the orders of the United States Bankruptcy Court for the Eastern District of Kentucky 44

August 4, 2004 Opinion of the United States Court of Appeals for the Sixth Circuit denying sovereign immunity 46

September 30, 2004 Order of the United States Court of Appeals for the Sixth Circuit denying rehearing *en banc* 48

RELEVANT DOCKET ENTRIES

In the United States Bankruptcy Court for the Eastern District of Kentucky:	
February 5, 2003	**Adversary Complaint filed against Virginia Military Institute**
February 11, 2003	**Adversary Complaint filed against Central Virginia Community College**
February 14, 2003	**Adversary Complaint filed against Blue Ridge Community College**
February 25, 2003	**Amended Complaint filed against New River Community College**
May 19, 2003	**Order denying sovereign immunity to Virginia Military Institute**
May 19, 2003	**Order denying sovereign immunity to Central Virginia Community College**
May 19, 2003	**Order denying sovereign immunity to Blue Ridge Community College**
May 19, 2003	**Order denying sovereign immunity to New River Community College**
United States District Court for the Eastern District of Kentucky	
August 5, 2003	**Decision affirming the orders of the United States Bankruptcy Court for the Eastern District of Kentucky**
In the United States Court of Appeals for the Sixth Circuit	
August 4, 2004	**Opinion affirming the judgment of the United States District Court for the Eastern District of Kentucky**
September 30, 2004	**Order denying rehearing *en banc***

IN THE UNITED STATES BANKRUPTCY COURT FOR THE EASTERN DISTRICT OF KENTUCKY LEXINGTON DIVISION

In Re:	Chapter 11
WALLACE'S BOOKSTORES, INC., *et al.*,	Substantively Consolidated No. 01-50545
Debtors.	(Chief Judge William S. Howard)
BERNARD KATZ, LIQUIDATING SUPERVISOR FOR WALLACE'S BOOKSTORES, INC., *et al*	Adversary Proceeding No. 03-___
Plaintiff,	
v.	
VIRGINIA MILITARY INSTITUTE,	
Defendant.	

SERVE: General Robert L. Green, Superintendent, Virginia Military Institute, 303 Smith Hall, Lexington, VA 24450

Sam Whitt, President of Board of Visitors, Virginia Military Institute, 201 Smith Hall, Lexington, VA 24450

COMPLAINT TO AVOID AND RECOVER PREFERENTIAL TRANSFERS AND TO DISALLOW CLAIMS PURSUANT TO 11 U.S.C. §502

Plaintiff, Bernard Katz, Liquidating Supervisor for Wallace's Bookstores, Inc., by counsel, for his Complaint to Avoid and Recover Preferential Transfers against

Defendant, Virginia Military Institute, respectfully states as follows:

JURISDICTION AND VENUE

1. The United States Bankruptcy Court for the Eastern District of Kentucky has jurisdiction over this adversary proceeding pursuant to 28 U.S.C. §§ 157 and 1334, and Federal Rule of Bankruptcy Procedure Rule 7001(1).

2. Venue is proper in this district under 28 U.S.C. § 1409.

3. The relief requested herein is a core proceeding pursuant to 28 U.S.C. § 157(b)(1) and (b)(2)(A), (E), and (O).

4. The statutory predicates for the relief requested herein are Sections 541, 544(b), 547(b), and 550 of the Bankruptcy Reform Act of 1978, 28 U.S.C. §§ 101-1330 (the "Bankruptcy Code"), and Kentucky Revised Statute 378.060.

5. Plaintiff is the duly appointed and approved Liquidating Supervisor in this matter.

6. Defendant is engaged in the business of retail sales of supplies and/or other services in the United States. Upon information and belief, Defendant is a resident of the United States.

FACTUAL BACKGROUND

7. On February 28, 2001 (the "Original Petition Date"), Wallace's Book Stores, Inc., filed for protection

under Chapter 11 of Title 11 of the Bankruptcy Code. The bankruptcy case is being jointly administered by prior order of this Court as substantively consolidated Case No. 01-50545.

8. On March 20, 2002, the United States Bankruptcy Court for the Eastern District of Kentucky entered an "Order Confirming Second Amended Joint Consolidated Plan of Liquidation of Wallace's Bookstores, Inc. and Its Subsidiaries, and Wallace's Book Company, Inc., Debtors and Debtors-in-Possession," which Order approved the referenced Plan of Liquidation. The Plan of Liquidation provided for the appointment of a Liquidating Supervisor, who among other things, became the responsible party for the Debtors and became vested with the duties set forth in the Plan, including the duty to prosecute causes of action. Bernard Katz was appointed as Liquidating Supervisor and is thus the real party in interest as Plaintiff in this action.

9. Prior to the Original Petition Date and for some time thereafter, Debtors offered textbook buy-back and wholesale textbook distribution services and were collectively one of the nation's largest suppliers of new and used textbooks and college bookstore supplies throughout North America.

COUNT I
PAYMENT ON ACCOUNT

10. Paragraphs 1 through 9 above are incorporated herein by reference as if fully set forth herein.

11. Debtors fulfilled the Defendant's orders for goods by shipping the Sale Goods as requested by the Defendant.

12. The Defendant currently owes Debtors $30,409.00 for the Sale Goods.

13. Debtors have made demands, both orally and in writing, for payment in the amount of $30,409.00 for the Sale Goods.

14. Despite Debtors' efforts to collect the amount owed by the Defendant, that amount is now overdue, and the Defendant has refused to pay it.

15. Accordingly, Plaintiff [sic] are entitled to Judgment against the Defendant for $30,409.00, plus interest, attorneys' fees and costs incurred in collecting the amounts due from the Defendant.

COUNT II
TURNOVER OF PROPERTY OF THE ESTATE

16. Paragraphs 1 through 15 above, are incorporated herein by reference as if fully set forth herein.

17. Pursuant to 11 U.S.C. § 542, "an entity, other than a custodian, in possession, custody or control" of property of a debtor's estate must turn over and deliver such property or the value of such property to the debtor.

18. The amount owed to Debtors by the Defendant is property of Debtors' bankruptcy estate.

19. The Defendant is in possession of such property of Debtors' estate.

20. Such property is not of inconsequential value or benefit to Debtors' estate and to Debtors' creditors.

21. Accordingly, pursuant to Section 542(a) of the Bankruptcy Code, Plaintiff is entitled to an Order of the

Court directing the Defendant to immediately turn over the sum of $30,409.00, plus interest, attorneys' fees and costs incurred.

//

COUNT III
AVOIDANCE AND RECOVERY OF PREFERENTIAL TRANSFERS UNDER AUTHORITY OF 11 U.S.C. § 547 AND 11 U.S.C. § 550

22. Paragraphs 1 through 21 above are incorporated herein by reference as if fully set forth herein.

23. Debtors filed for protection under chapter 11 of the Bankruptcy Code on February 28, 2001, the Original Petition Date.

24. During the ninety (90) day period immediately preceding the Original Petition Date (the "Code Preference Period"), Defendant received certain transfers of interest of Debtors in property totaling $25,595.00, which were avoidable preferential transfers under 11 U.S.C. § 547 recoverable by Plaintiff under 11 U.S.C. § 550. These transfers are more particularly described on Exhibit "A" attached hereto and incorporated by reference as if fully set forth herein (the "Transfers").

25. The Transfers were made to or for the benefit of Defendant.

26. The Transfers were made for or on account of an antecedent debt owed by Debtors.

27. The Transfers were made while Debtors were insolvent.

28. The Transfers enabled Defendant to receive more than Defendant would have received if (i) Debtors' bankruptcy case were a case under Chapter 7 of the Bankruptcy Code; (ii) the Transfers had not been made; and (iii) Defendant received from the Debtors' Chapter 7 estate payment of the debts satisfied by the Transfers to the extent provided under Chapter 7 of the Bankruptcy Code.

29. Defendant is the "initial transferee" of the Transfers from Debtors, as that term is used in § 550(a) of the Bankruptcy Code.

30. The Transfers are avoidable preferences under 11 U.S.C. § 547(b). Plaintiff is entitled to recover the value of the Transfers from the Defendant under 11 U.S.C. § 550(a).

COUNT IV
AVOIDANCE AND RECOVERY OF PREFERENTIAL TRANSFERS UNDER AUTHORITY OF 11 U.S.C. § 544(B) AND K.R.S. 378.060

31. Paragraphs 1 through 30 above are incorporated herein by reference as if fully set forth herein.

32. Debtors filed for protection under chapter 11 of the Bankruptcy Code on February 28, 2001, the Original Petition Date.

33. During the six (6) month period immediately preceding the Original Petition Date (the "Kentucky Preference Period"), Defendant received certain transfers of interests of Debtors in property totaling $77,654.00 which were avoidable preferential transfers under K.R.S. 378.060 and recoverable by Plaintiff under said statute and 11 U.S.C. §§ 544(b) and 550. These transfers are more

particularly described on Exhibits "A" and "B" attached hereto and incorporated by reference as if fully set forth herein (the "Transfers").

34. The Transfers were made to or for the benefit of Defendant.

35. The Transfers were made for or on account of an antecedent debt.

36. The Transfers were made when the Debtors were in fact insolvent, and when the Debtors either knew they were insolvent or reasonably should have known they were insolvent.

37. The Transfers were made in contemplation of insolvency and with the design to prefer or favor the Defendant to the exclusion and detriment, in whole or in part, of other creditors.

38. Defendant is the "initial transferee" of the Transfers from Debtors, and is not a good faith purchaser for value.

39. The Transfers are avoidable preferences under K.R.S. 378.060. Plaintiff is entitled to recover the value of the Transfers from the Defendant under said statute as well as 11 U.S.C. §§ 544(b) and 550.

COUNT V
DISALLOWANCE OF CLAIMS

40. Paragraphs 1 through 39 above are incorporated herein by reference as if fully set forth herein.

41. Pursuant to 11 U.S.C. § 502(d), "the court shall disallow any claim of any entity from which property is

recoverable under section 542, 543, 550, or 553 of this title . . . unless such entity or transferee has paid the amount or turned over any such property, for which such entity or transferee is liable under section 522(i), 542, 543, 550, or 553 of this title."

42. Any claims of the Defendant asserted against the Debtors' estates should be disallowed until full payment and/or turnover of the amount of $108,063.00 is made to the Plaintiff.

WHEREFORE, Plaintiff respectfully requests that this Court enter Judgment against Defendant:

(a) For all amounts now due and owing in an amount not less than $30,409.00, together with interest at the statutory rate.

(b) Requiring the Defendant to turn over to the Plaintiff all sums due and owing to the Debtors pursuant to 11 U.S.C. § 542.

(c) Avoiding the Transfers pursuant to § 547(b) of the Bankruptcy Code and requiring Defendant to return the Transfers or the value of the Transfers in the amount of $25,595.00 pursuant to § 550(a) of the Bankruptcy Code, together with interest thereon as provided by law;

(d) Avoiding the Transfers pursuant to K.R.S. 378.060 and § 544(b) of the Bankruptcy Code and requiring Defendant to return the Transfers or the value of the Transfers in the amount of $77,654.00 pursuant to § 550(a) of the Bankruptcy Code, together with interest thereon as provided by law.

(e) Disallowing Defendant's pre-petition claims, whether secured or unsecured, in their entirety

pursuant to 11 U.S.C. § 502(d) until such time as the Defendant remits full payment to Plaintiff;

(f) Awarding Plaintiff reasonable attorneys' fees and costs incurred in the prosecution of this action; and

(g) Awarding Plaintiff such other legal or equitable relief as this Court deems appropriate.

DATED: _____

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Counsel for Plaintiff
Bernard Katz, Liquidating Supervisor

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE EASTERN DISTRICT OF KENTUCKY
LEXINGTON DIVISION

In Re:	:	Chapter 11
WALLACE'S BOOKSTORES, INC., *et al.*,	:	Substantively Consolidated No. 01-50545
Debtors.	:	(Chief Judge William S. Howard)
BERNARD KATZ, LIQUIDATING SUPERVISOR FOR WALLACE'S BOOKSTORES, INC., *et al*	:	Adversary Proceeding No. 03-5081
Plaintiff,	:	
v.	:	
CENTRAL VIRGINIA COMMUNITY COLLEGE	:	
Defendant.	:	

SERVE: Dr. Darrel W. Staat, President
Central Virginia Community College
3506 Wards Road
Lynchburg, VA 24502

COMPLAINT TO AVOID AND RECOVER PREFERENTIAL TRANSFERS AND TO DISALLOW CLAIMS PURSUANT TO 11 U.S.C. §502

Plaintiff, Bernard Katz, Liquidating Supervisor for Wallace's Bookstores, Inc., by counsel, for his Complaint to Avoid and Recover Preferential Transfers against Defendant, Central Virginia Community College, respectfully states as follows:

JURISDICTION AND VENUE

1. The United States Bankruptcy Court for the Eastern District of Kentucky has jurisdiction over this adversary proceeding pursuant to 28 U.S.C. §§ 157 and 1334, and Federal Rule of Bankruptcy Procedure Rule 7001(1).

2. Venue is proper in this district under 28 U.S.C. § 1409.

3. The relief requested herein is a core proceeding pursuant to 28 U.S.C. § 157(b)(1) and (b)(2)(A), (E), and (O).

4. The statutory predicates for the relief requested herein are Sections 541, 544(b), 547(b), and 550 of the Bankruptcy Reform Act of 1978, 28 U.S.C. §§ 101-1330 (the "Bankruptcy Code"), and Kentucky Revised Statute 378.060.

5. Plaintiff is the duly appointed and approved Liquidating Supervisor in this matter.

6. Defendant is engaged in the business of retail sales of supplies and/or other services in the United States. Upon information and belief, Defendant is a resident of the United States.

FACTUAL BACKGROUND

7. On February 28, 2001 (the "Original Petition Date"), Wallace's Book Stores, Inc., filed for protection under Chapter 11 of Title 11 of the Bankruptcy Code. The bankruptcy case is being jointly administered by prior order of this Court as substantively consolidated Case No. 01-50545.

8. On March 20, 2002, the United States Bankruptcy Court for the Eastern District of Kentucky entered an "Order Confirming Second Amended Joint Consolidated Plan of Liquidation of Wallace's Bookstores, Inc. and Its Subsidiaries, and Wallace's Book Company, Inc., Debtors and Debtors-in-Possession," which Order approved the referenced Plan of Liquidation. The Plan of Liquidation provided for the appointment of a Liquidating Supervisor, who among other things, became the responsible party for the Debtors and became vested with the duties set forth in the Plan, including the duty to prosecute causes of action. Bernard Katz was appointed as Liquidating Supervisor and is thus the real party in interest as Plaintiff in this action.

9. Prior to the Original Petition Date and for some time thereafter, Debtors offered textbook buy-back and wholesale textbook distribution services and were collectively one of the nation's largest suppliers of new and used textbooks and college bookstore supplies throughout North America.

COUNT I
PAYMENT ON ACCOUNT

10. Paragraphs 1 through 9 above are incorporated herein by reference as if fully set forth herein.

11. Debtors fulfilled the Defendant's orders for goods by shipping the Sale Goods as requested by the Defendant.

12. The Defendant currently owes Debtors $4,898.00 for the Sale Goods.

13. Debtors have made demands, both orally and in writing, for payment in the amount of $4,898.00 for the Sale Goods.

14. Despite Debtors' efforts to collect the amount owed by the Defendant, that amount is now overdue, and the Defendant has refused to pay it.

15. Accordingly, Plaintiff [sic] are entitled to Judgment against the Defendant for $4,898.00, plus interest, attorneys' fees and costs incurred in collecting the amounts due from the Defendant.

COUNT II
TURNOVER OF PROPERTY OF THE ESTATE

16. Paragraphs 1 through 15 above, are incorporated herein by reference as if fully set forth herein.

17. Pursuant to 11 U.S.C. § 542, "an entity, other than a custodian, in possession, custody or control" of property of a debtor's estate must turn over and deliver such property or the value of such property to the debtor.

18. The amount owed to Debtors by the Defendant is property of Debtors' bankruptcy estate.

19. The Defendant is in possession of such property of Debtors' estate.

20. Such property is not of inconsequential value or benefit to Debtors' estate and to Debtors' creditors.

21. Accordingly, pursuant to Section 542(a) of the Bankruptcy Code, Plaintiff is entitled to an Order of the Court directing the Defendant to immediately turn over the sum of $4,898.00, plus interest, attorneys' fees and costs incurred.

COUNT III
AVOIDANCE AND RECOVERY OF PREFERENTIAL TRANSFERS UNDER AUTHORITY OF 11 U.S.C. § 547 AND 11 U.S.C. § 550

22. Paragraphs 1 through 21 above are incorporated herein by reference as if fully set forth herein.

23. Debtors filed for protection under chapter 11 of the Bankruptcy Code on February 28, 2001, the Original Petition Date.

24. During the ninety (90) day period immediately preceding the Original Petition Date (the "Code Preference Period"), Defendant received certain transfers of interest of Debtors in property totaling $63,387.00, which were avoidable preferential transfers under 11 U.S.C. § 547 recoverable by Plaintiff under 11 U.S.C. § 550.

25. The Transfers were made to or for the benefit of Defendant.

26. The Transfers were made for or on account of an antecedent debt owed by Debtors.

27. The Transfers were made while Debtors were insolvent.

28. The Transfers enabled Defendant to receive more than Defendant would have received if (i) Debtors' bankruptcy case were a case under Chapter 7 of the Bankruptcy Code; (ii) the Transfers had not been made; and (iii) Defendant received from the Debtors' Chapter 7 estate payment of the debts satisfied by the Transfers to the extent provided under Chapter 7 of the Bankruptcy Code.

29. Defendant is the "initial transferee" of the Transfers from Debtors, as that term is used in § 550(a) of the Bankruptcy Code.

30. The Transfers are avoidable preferences under 11 U.S.C. § 547(b). Plaintiff is entitled to recover the value of the Transfers from the Defendant under 11 U.S.C. § 550(a).

COUNT IV
DISALLOWANCE OF CLAIMS

31. Paragraphs 1 through 30 above are incorporated herein by reference as if fully set forth herein.

32. Pursuant to 11 U.S.C. § 502(d), "the court shall disallow any claim of any entity from which property is recoverable under section 542, 543, 550, or 553 of this title . . . unless such entity or transferee has paid the amount or turned over any such property, for which such entity or transferee is liable under section 522(i), 542, 543, 550, or 553 of this title."

33. Any claims of the Defendant asserted against the Debtors' estates should be disallowed until full payment and/or turnover of the amount of $68,285.00 is made to the Plaintiff.

WHEREFORE, Plaintiff respectfully requests that this Court enter Judgment against Defendant:

(a) For all amounts now due and owing in an amount not less than $4,898.00 together with interest at the statutory rate;

(b) Requiring the Defendant to turn over to the Plaintiff all sums due and owing to the Debtors pursuant to 11 U.S.C. § 542;

(c) Avoiding the Transfers pursuant to § 547(b) of the Bankruptcy Code and requiring Defendant to return the Transfers or the value of the Transfers in the amount of $63,387.00 pursuant to § 550(a)

of the Bankruptcy Code, together with interest thereon as provided by law;

(d) Disallowing Defendant's pre-petition claims, whether secured or unsecured, in their entirety pursuant to 11 U.S.C. § 502(d) until such time as the Defendant remits full payment to Plaintiff;

(e) Awarding Plaintiff reasonable attorneys' fees and costs incurred in the prosecution of this action; and

(f) Awarding Plaintiff such other legal or equitable relief as this Court deems appropriate.

DATED: February 12, 2003

DINSMORE & SHOHL LLP
By: /s/ Sonja S. Keating
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and

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(513) 977-8200

Counsel for Plaintiff,
Bernard Katz, Liquidating Supervisor

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE EASTERN DISTRICT OF KENTUCKY
LEXINGTON DIVISION

In Re:	Chapter 11
WALLACE'S BOOKSTORES, INC., *et al.*,	Case Nos. 01-50545 (Substantively Consolidated)
Debtors.	(Chief Judge William S. Howard)
BERNARD KATZ, LIQUIDATING SUPERVISOR FOR WALLACE'S BOOKSTORES, INC., *et al*	Adversary Proceeding No. 03-_____
Plaintiff,	
v.	
BLUE RIDGE COMMUNITY COLLEGE (VA),	
Defendant.	

SERVE: Dr. James Perkins, President
Box 80, One College Lane
Weyers Cave, VA 24486

Blue Ridge Community College
C/O C. Tabor Cronk
900 East Main Street
Richmond, VA 23219-3513

Blue Ridge Community College
C/O Maureen Matsen
900 East Main Street
Richmond, VA 23219-3513

COMPLAINT FOR (1) PAYMENT ON ACCOUNT; (2) TURNOVER OF ESTATE PROPERTY PURSUANT TO 11 U.S.C. § 542; (3) AVOIDANCE AND RECOVERY OF PREFERENTIAL TRANSFERS; AND (4) DISALLOWANCE OF CLAIMS PURSUANT TO 11 U.S.C. §502

Plaintiff, Bernard Katz, Liquidating Supervisor for Wallace's Bookstores, Inc., by counsel, for his Complaint for (1) Payment on Account; (2) Turnover of Estate Property Pursuant to 11 U.S.C. § 542; (3) Avoidance and Recovery of Preferential Transfers; and (4) Disallowance of Claims pursuant to 11 U.S.C. §502 against Defendant, Blue Ridge CC (VA), respectfully states as follows:

JURISDICTION AND VENUE

1. The United States Bankruptcy Court for the Eastern District of Kentucky has jurisdiction over this adversary proceeding pursuant to 28 U.S.C. §§ 157 and 1334, and Federal Rule of Bankruptcy Procedure Rule 7001(1).

2. Venue is proper in this district under 28 U.S.C. § 1409.

3. The relief requested herein is a core proceeding pursuant to 28 U.S.C. § 157(b)(1) and (b)(2)(A), (B), (E), (L) and (O).

4. The statutory predicates for the relief requested herein are Sections 502, 541, 542, 544(b), 547(b), 550 and 1126 of the Bankruptcy Reform Act of 1978, 28 U.S.C. §§ 101-1330 (the "Bankruptcy Code").

5. Plaintiff is the duly appointed and approved Liquidating Supervisor in this matter.

6. Defendant, Blue Ridge Community College (VA) (hereinafter, "Defendant"), is engaged in the business of education services and/or retail sales of textbooks, supplies and/or services in the United States. Upon information and belief, Blue Ridge CC is a resident of the United States.

FACTUAL BACKGROUND

7. On February 28, 2001 (the "Original Petition Date"), Wallace's Book Stores, Inc., ("WBI"), Wallace's Book Company, Inc., ("WBC") and sixty (60) wholly-owned subsidiaries of WBI (the "Original Debtors") each filed for protection under Chapter 11 of Title 11 of the Bankruptcy Code. Each of the bankruptcy cases of the Original Debtors is being jointly administered by prior order of this Court as Case Nos. 01-50545 through 01-50606 (the "Original Cases"). On April 5, 2001 (the "New Petition Date"), seven additional wholly-owned subsidiaries of WBI (collectively, the "New Debtors"), each filed for protection under Chapter 11 of the Bankruptcy Code under Case Nos. 01-51059 through 01-51065 (the "New Cases"). On April 23, 2001, the Court entered an Order directing the joint administration of the New Cases with the Original Cases (collectively, the "Cases").

8. On March 20, 2002, the United States Bankruptcy Court for the Eastern District of Kentucky entered an "Order Confirming Second Amended Joint Consolidated Plan of Liquidation of Wallace's Bookstores, Inc. and Its Subsidiaries, and Wallace's Book Company, Inc., Debtors and Debtors-in-Possession," which Order approved the referenced Plan of Liquidation. The Plan of Liquidation provided for the appointment of a Liquidating Supervisor, who among other things, became the responsible party for

the Debtors and became vested with the duties set forth in the Plan, including the duty to prosecute causes of action. Bernard Katz was appointed as Liquidating Supervisor and is thus the real party in interest as Plaintiff in this action.

9. Prior to the Original Petition Date and for some time thereafter, Debtors offered textbook buy-back and wholesale textbook distribution services and were collectively one of the nation's largest suppliers of new and used textbooks and college bookstore supplies throughout North America.

10. Prior and subsequent to the Original Petition Date, Debtors supplied textbooks, trade books and miscellaneous course books, materials and other goods to the Defendant or to other entities or persons at the Defendant's direction. The Defendant's purchases from Debtors were on an open account basis.

11. During the ninety (90) day period immediately preceding the Petition Date (the "Code Preference Period"), Defendant received certain transfers of interests of the Debtors in property totaling $34,054.58 which were avoidable preferential transfers under 11 U.S.C. § 547 recoverable by Plaintiff under 11 U.S.C. § 550.

COUNT I
PAYMENT ON ACCOUNT

12. Paragraphs 1 through 4 above are incorporated herein by reference as if fully set forth herein.

13. Debtors fulfilled the Defendant's orders for goods by shipping sale goods as requested by the Defendant. A copy of the Debtor's current statement of accounts for the

Defendant (the "Statement") is attached hereto as Exhibit "A" and made a part hereof by reference.

14. The Defendant currently owes Debtors $35,317.61. *See* Exhibit A.

15. Debtors have made demands, both orally and in writing, for payment in the amount of $35,317.60 for the Sale of Goods. A copy of the demand letter sent to the Defendant is attached hereto as Exhibit "B" and made a part hereof by reference.

16. Despite Debtor's efforts to collect the amount owed by the Defendant, that amount is now overdue, and the Defendant has refused to pay it.

17. Accordingly, Plaintiff [sic] is entitled to a judgment against the Defendant for $35,317.60, plus interest, attorneys' fees and costs incurred by Plaintiffs in collecting the amounts due from the Defendant.

COUNT II
TURNOVER OF PROPERTY OF THE ESTATE

18. Paragraphs 1 through 17 above, are incorporated herein by reference as if fully set forth herein.

19. Pursuant to 11 U.S.C. § 542, "an entity, other than a custodian, in possession, custody or control" of property of a debtor's estate must turn over and deliver such property or the value of such property to the debtor.

20. The amount owed to Debtors and the Plaintiff by the Defendant is property of Debtors' bankruptcy estate.

21. The Defendant is in possession of such property of Debtors' estate.

22. Such property is not of inconsequential value or benefit to Debtors' estate and to Debtors' creditors.

23. Accordingly, pursuant to Section 542(a) of the Bankruptcy Code, Plaintiff is entitled to an Order of the Court directing the Defendant to immediately turn over the sum of $35,317.60, plus interest, attorneys' fees and costs incurred.

COUNT III
AVOIDANCE AND RECOVERY OF PREFERENTIAL TRANSFERS UNDER AUTHORITY OF 11 U.S.C. § 547 AND 11 U.S.C. § 550

24. Paragraphs 1 through 23 above are incorporated herein by reference as if fully set forth herein.

25. Debtors filed for protection under chapter 11 of the Bankruptcy Code on February 28, 2001, the Original Petition Date.

26. During the ninety (90) day period immediately preceding the Petition Date (the "Code Preference Period"), Defendant received certain transfers of interests of Debtors in property totaling $34,054.58 which were avoidable preferential transfers under 11 U.S.C. § 547 recoverable by Plaintiff under 11 U.S.C. § 550. These transfers are more particularly described on Exhibit "C" attached hereto and incorporated by reference as if fully set forth herein (the "Transfers").

27. The Transfers were made to or for the benefit of Defendant.

28. The Transfers were made for or on account of an antecedent debt owed by Debtors.

29. The Transfers were made while Debtors were insolvent.

30. The Transfers enabled Defendant to receive more than Defendant would have received if (i) Debtors' bankruptcy case were a case under Chapter 7 of the Bankruptcy Code; (ii) the Transfers had not been made; and (iii) Defendant received from the Debtors' Chapter 7 estate payment of the debts satisfied by the Transfers to the extent provided under Chapter 7 of the Bankruptcy Code.

31. Defendant is the "initial transferee" of the Transfers from Debtors, as that term is used in § 550(a) of the Bankruptcy Code.

32. The Transfers are avoidable preferences under 11 U.S.C. § 547(b). Plaintiff is entitled to recover the value of the Transfers from the Defendant under 11 U.S.C. § 550(a).

COUNT IV
AVOIDANCE AND RECOVERY OF PREFERENTIAL TRANSFERS UNDER AUTHORITY OF 11 U.S.C. § 544(b) AND K.R.S. 378.060

33. Paragraphs 1 through 25 above are incorporated herein by reference as if fully set forth herein.

34. During the six (6) month period immediately preceding the Petition Date (the "Kentucky Preference Period"), Defendant received certain transfers of interests of Debtors in property totaling $35,312.50 (which includes those Transfers more particularly described in numerical paragraph 26 above) which were avoidable preferential transfers under K.R.S. 378.060 and recoverable by Plaintiff under said statute and 11 U.S.C. §§ 544(b) and 550.

These transfers are more particularly described in Exhibit "D" attached hereto (the Transfers").

35. The Transfers was made to or for the benefit of Defendant.

36. The Transfers was made for or on account of an antecedent debt.

37. The Transfers was made when the Debtors were in fact insolvent, and when the Debtors either knew they were insolvent or reasonably should have known they were insolvent.

38. The Transfers was made in contemplation of insolvency and with the design to prefer or favor the Defendant to the exclusion and detriment, in whole or in part, of other creditors.

39. Defendant is the "initial transferee" of the Transfers from Debtors, and is not a good faith purchaser for value.

40. The Transfers are an avoidable preference under K.R.S. 378.060. Plaintiff is entitled to recover the value of the Transfers from the Defendant under said statute as well as 11 U.S.C. §§ 544(b) and 550.

COUNT V
DISALLOWANCE OF CLAIMS

41. Paragraphs 1 through 40 above are incorporated herein by reference as if fully set forth herein.

42. Pursuant to 11 U.S.C. § 502(d), "the court shall disallow any claim of any entity from which property is recoverable under section 542, 543, 550, or 553 of this title

. . . unless such entity or transferee has paid the amount or turned over any such property, for which such entity or transferee is liable under section 522(i), 542, 543, 550, or 553 of this title."

43. Any claims of the Defendant asserted against the Debtors' estates should be disallowed until full payment and/or turnover of the amount of $70,630.20 is made to the Plaintiff.

WHEREFORE, Plaintiff respectfully requests that this Court enter a judgment against Blue Ridge CC (VA):

(a) For all amounts now due and owing in an amount not less than $35,317.60, together with interest at the statutory rate;

(b) Requiring the Defendant to turn over to the Plaintiff all sums due and owing to the Debtors pursuant to 11 U.S.C. § 542;

(c) Avoiding the Transfers pursuant to § 547(b) of the Bankruptcy Code and requiring Defendant to return the Transfers or the value of the Transfers in the amount of $34,054.58 pursuant to § 550(a) of the Bankruptcy Code, together with interest thereon as provided by law;

(d) Avoiding the Transfers pursuant to K.R.S. 378.060 and § 544(b) of the Bankruptcy Code and requiring Defendant to return the Transfers or the value of the Transfer in the amount of $35,312.50 (which includes those Transfers more particularly described in paragraph c above) pursuant to § 550(a) of the Bankruptcy Code, together with interest thereon as provided by law;

(e) Disallowing Defendant's prepetition claims, whether secured or unsecured, in their entirety

pursuant to 11 U.S.C. § 502(d) until such time as the Defendant remits full payment to Plaintiff;

(f) Awarding Plaintiff reasonable attorneys' fees and costs incurred in the prosecution of this action; and

(g) Awarding Plaintiff such other legal or equitable relief as this Court deems appropriate.

DATED: Lexington, Kentucky
February 14, 2003

DINSMORE & SHOHL LLP
By: /s/ Grahmn N. Morgan
Grahmn N. Morgan
Anthony P. Sammons
Sonja S. Keating
Dinsmore & Shohl LLP
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(859) 425-1000

and

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Counsel for Plaintiff
Bernard Katz, Liquidating Supervisor for Wallace's Bookstores, Inc., et al

IN THE UNITED STATES BANKRUPTCY COURT FOR THE EASTERN DISTRICT OF KENTUCKY LEXINGTON DIVISION

In Re:	:	Chapter 11
WALLACE'S BOOKSTORES, INC., *et al.*,	:	Substantively Consolidated No. 01-50545
Debtors.	:	(Chief Judge William S. Howard)
BERNARD KATZ, LIQUIDATING SUPERVISOR FOR WALLACE'S BOOKSTORES, INC., *et al*	:	Adversary Proceeding No. 03-5041
Plaintiff,	:	
v.	:	
NEW RIVER COMMUNITY COLLEGE	:	
Defendant.	:	

SERVE: Dr. Jack M. Lewis, President
New River Community College
5251 College Drive
Dublin, VA 24084

AMENDED COMPLAINT TO AVOID AND RECOVER PREFERENTIAL TRANSFERS AND TO DISALLOW CLAIMS PURSUANT TO 11 U.S.C. §502

Plaintiff, Bernard Katz, Liquidating Supervisor for Wallace's Bookstores, Inc., by counsel, for his Amended Complaint to Avoid and Recover Preferential Transfers against Defendant, New River Community College, respectfully states as follows:

JURISDICTION AND VENUE

1. The United States Bankruptcy Court for the Eastern District of Kentucky has jurisdiction over this adversary proceeding pursuant to 28 U.S.C. §§ 157 and 1334, and Federal Rule of Bankruptcy Procedure Rule 7001(1).

2. Venue is proper in this district under 28 U.S.C. § 1409.

3. The relief requested herein is a core proceeding pursuant to 28 U.S.C. § 157(b)(1) and (b)(2)(A), (E), and (O).

4. The statutory predicates for the relief requested herein are Sections 541, 544(b), 547(b), and 550 of the Bankruptcy Reform Act of 1978, 28 U.S.C. §§ 101-1330 (the "Bankruptcy Code"), and Kentucky Revised Statute 378.060.

5. Plaintiff is the duly appointed and approved Liquidating Supervisor in this matter.

6. Defendant is engaged in the business of retail sales of supplies and/or other services in the United States. Upon information and belief, Defendant is a resident of the United States.

FACTUAL BACKGROUND

7. On February 28, 2001 (the "Original Petition Date"), Wallace's Book Stores, Inc., filed for protection under Chapter 11 of Title 11 of the Bankruptcy Code. The bankruptcy case is being jointly administered by prior order of this Court as substantively consolidated Case No. 01-50545.

8. On March 20, 2002, the United States Bankruptcy Court for the Eastern District of Kentucky entered an "Order Confirming Second Amended Joint Consolidated Plan of Liquidation of Wallace's Bookstores, Inc. and Its Subsidiaries, and Wallace's Book Company, Inc., Debtors and Debtors-in-Possession," which Order approved the referenced Plan of Liquidation. The Plan of Liquidation provided for the appointment of a Liquidating Supervisor, who among other things, became the responsible party for the Debtors and became vested with the duties set forth in the Plan, including the duty to prosecute causes of action. Bernard Katz was appointed as Liquidating Supervisor and is thus the real party in interest as Plaintiff in this action.

9. Prior to the Original Petition Date and for some time thereafter, Debtors offered textbook buy-back and wholesale textbook distribution services and were collectively one of the nation's largest suppliers of new and used textbooks and college bookstore supplies throughout North America.

COUNT I
PAYMENT ON ACCOUNT

10. Paragraphs 1 through 9 above are incorporated herein by reference as if fully set forth herein.

11. Sometime prior to the filing of the bankruptcy petitions herein, Debtors had entered into a bookstore lease agreement with Defendant.

12. Under the terms of the lease agreement, the Debtors operated a book store establishment on Defendant's premises, and in exchange, paid to the Defendant a

monthly lease fee in an amount equal to a stated percentage of monthly sales or a stated minimum monthly payment.

13. During a period of time before and following the initial filing of petitions in this matter, Debtors continued to operate the book store under the terms of the lease agreement, as tenant and as Debtors-in-Possession, and in the course of this activity, tendered lease payments to the Defendant which exceeded the amounts actually owed under the lease agreement.

14. During this same time, additional payments Defendant owed to the Debtors under the lease agreement continued to accrue.

15. Additionally, Debtors fulfilled the Defendant's orders for goods by shipping Sale Goods as requested by the Defendant. A copy of the Debtors' current statement of accounts for the Defendant (the "Statement") is attached hereto as Exhibit "A" and made a part hereof by reference.

16. The Defendant currently owes Debtors $97,249.61 for the Sale Goods and accrued lease liability.

17. Debtors have made demands, both orally and in writing, for payment in the amount of $97,249.61 for the amounts owed.

18. Despite Debtors' efforts to collect the amount owed by the Defendant, that amount is now overdue, and the Defendant has refused to pay it.

19. Accordingly, Plaintiff [sic] is entitled to Judgment against the Defendant for $97,249.61, plus interest, attorneys' fees and costs incurred in collecting the amounts due from the Defendant.

COUNT II
TURNOVER OF PROPERTY OF THE ESTATE

20. Paragraphs 1 through 19 above, are incorporated herein by reference as if fully set forth herein.

21. Pursuant to 11 U.S.C. § 542, "an entity, other than a custodian, in possession, custody or control" of property of a debtor's estate must turn over and deliver such property or the value of such property to the debtor.

22. The amount owed to Debtors by the Defendant is property of Debtors' bankruptcy estate.

23. The Defendant is in possession of such property of Debtors' estate.

24. Such property is not of inconsequential value or benefit to Debtors' estate and to Debtors' creditors.

25. Accordingly, pursuant to Section 542(a) of the Bankruptcy Code, Plaintiff is entitled to an Order of the Court directing the Defendant to immediately turn over the sum of $97,249.61, plus interest, attorneys' fees and costs incurred.

COUNT III
AVOIDANCE AND RECOVERY OF PREFERENTIAL TRANSFERS UNDER AUTHORITY OF 11 U.S.C. § 547 AND 11 U.S.C. § 550

26. Paragraphs 1 through 25 above are incorporated herein by reference as if fully set forth herein.

27. Debtors filed for protection under chapter 11 of the Bankruptcy Code on February 28, 2001, the Original Petition Date.

28. During the ninety (90) day period immediately preceding the Original Petition Date (the "Code Preference Period"), Defendant received certain transfers of interest of Debtors in property totaling $65,264.00, which were avoidable preferential transfers under 11 U.S.C. § 547 recoverable by Plaintiff under 11 U.S.C. § 550. These transfers are more particularly described on Exhibit "B" attached hereto and incorporated by reference as if fully set forth herein (the "Transfers").

29. The Transfers were made to or for the benefit of Defendant.

30. The Transfers were made for or on account of an antecedent debt owed by Debtors.

31. The Transfers were made while Debtors were insolvent.

32. The Transfers enabled Defendant to receive more than Defendant would have received if (i) Debtors' bankruptcy case were a case under Chapter 7 of the Bankruptcy Code; (ii) the Transfers had not been made; and (iii) Defendant received from the Debtors' Chapter 7 estate payment of the debts satisfied by the Transfers to the extent provided under Chapter 7 of the Bankruptcy Code.

33. Defendant is the "initial transferee" of the Transfers from Debtors, as that term is used in § 550(a) of the Bankruptcy Code.

34. The Transfers are avoidable preferences under 11 U.S.C. § 547(b). Plaintiff is entitled to recover the value of the Transfers from the Defendant under 11 U.S.C. § 550(a).

COUNT IV
DISALLOWANCE OF CLAIMS

35. Paragraphs 1 through 34 above are incorporated herein by reference as if fully set forth herein.

36. Pursuant to 11 U.S.C. § 502(d), "the court shall disallow any claim of any entity from which property is recoverable under section 542, 543, 550, or 553 of this title . . . unless such entity or transferee has paid the amount or turned over any such property, for which such entity or transferee is liable under section 522(i), 542, 543, 550, or 553 of this title,"

37. Any claims of the Defendant asserted against the Debtors' estates should be disallowed until full payment and/or turnover of the amount of $162,513.61 is made to the Plaintiff.

WHEREFORE, Plaintiff respectfully requests that this Court enter Judgment against Defendant:

(a) For all amounts now due and owing in an amount not less than $97,249.61, together with interest at the statutory rate;

(b) Requiring the Defendant to turn over to the Plaintiff all sums due and owing to the Debtors pursuant to 11 U.S.C. § 542;

(c) Avoiding the Transfers pursuant to § 547(b) of the Bankruptcy Code and requiring Defendant to return the Transfers or the value of the Transfers in the amount of $65,264.00 pursuant to § 550(a) of the Bankruptcy Code, together with interest thereon as provided by law;

(d) Disallowing Defendant's pre-petition claims, whether secured or unsecured, in their entirety

pursuant to 11 U.S.C. § 502(d) until such time as the Defendant remits full payment to Plaintiff;

(e) Awarding Plaintiff reasonable attorneys' fees and costs incurred in the prosecution of this action; and

(f) Awarding Plaintiff such other legal or equitable relief as this Court deems appropriate.

DATED: February 25, 2003

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By: /s/ Sonja S. Keating
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Counsel for Plaintiff
Bernard Katz, Liquidating Supervisor

UNITED STATES BANKRUPTCY COURT
FOR THE EASTERN DISTRICT OF KENTUCKY
(Lexington Division)

IN RE: WALLACE'S BOOKSTORES, INC., et al.	CASE NO. 01-50545
DEBTORS	
BERNARD KATZ, LIQUIDATING SUPERVISOR FOR WALLACE'S BOOKSTORES, INC., et al.	PLAINTIFF
V.	ADV. NO. 03-5068
VIRGINIA MILITARY INSTITUTE	DEFENDANT

ORDER MODIFYING ORDER DENYING DEFENDANT'S MOTION TO DISMISS

By Order of April 24, 2003, the Court overruled Defendant's Motion to Dismiss raising the sovereign immunity of the Commonwealth of Virginia, and required Defendant to file its answer to the Complaint within ten days thereafter. The Defendant moved for relief from the requirement that it make answer to the Complaint, provided that it appealed from the denial of its Motion to Dismiss within the permitted time. The Court having heard the arguments of the parties on May 15, 2003, and being otherwise sufficiently advised,

IT IS HEREBY ORDERED AND ADJUDGED that Defendant's Motion is sustained to the extent that the Defendant is granted an extension of time in which to file an Answer, but is otherwise overruled. The Court's Order of April 24, 2003 is hereby modified as follows:

1. This is a core proceeding and this Court has jurisdiction to enter this Order pursuant to 28 U.S.C. §§ 157 and 1334.

2. Congress, through its enactment of 11 U.S.C. § 106(a), expressly and within its Constitutional authority, abrogated the states' Eleventh Amendment immunity.

3. Defendant's Motion to Dismiss is hereby DENIED.

4. Defendant shall have fifteen (15) days from the date of entry of this Order in which to file an Answer to the Adversary Complaint.

5. This Order modifies and supersedes the Order entered on April 24, 2003.

[SEAL]
Signed By:
William S. Howard
Bankruptcy Judge
Dated: Monday, May 19, 2003
(wsh)

UNITED STATES BANKRUPTCY COURT
FOR THE EASTERN DISTRICT OF KENTUCKY
(Lexington Division)

IN RE:
WALLACE'S BOOKSTORES,
INC., *et al.*

DEBTORS — CASE NO. 01-50545

BERNARD KATZ, LIQUIDATING
SUPERVISOR FOR WALLACE'S
BOOKSTORES, INC., *et al.* — PLAINTIFF

V. — ADV. NO. 03-5081

CENTRAL VIRGINIA COMMUNITY
COLLEGE — DEFENDANT

ORDER MODIFYING ORDER DENYING DEFENDANT'S MOTION TO DISMISS

By Order of April 24, 2003, the Court overruled Defendant's Motion to Dismiss raising the sovereign immunity of the Commonwealth of Virginia, and required Defendant to file its answer to the Complaint within ten days thereafter. The Defendant moved for relief from the requirement that it make answer to the Complaint, provided that it appealed from the denial of its Motion to Dismiss within the permitted time. The Court having heard the arguments of the parties on May 15, 2003, and being otherwise sufficiently advised,

IT IS HEREBY ORDERED AND ADJUDGED that Defendant's Motion is sustained to the extent that the Defendant is granted an extension of time in which to file an Answer, but is otherwise overruled. The Court's Order of April 24, 2003 is hereby modified as follows:

1. This is a core proceeding and this Court has jurisdiction to enter this Order pursuant to 28 U.S.C. §§ 157 and 1334.

2. Congress, through its enactment of 11 U.S.C. §106(a), expressly and within its Constitutional authority, abrogated the states' Eleventh Amendment immunity.

3. Defendant's Motion to Dismiss is hereby DENIED.

4. This is a final and appealable Order.

5. Defendant will [sic] fifteen (15) days from the date of entry of this Order in which to file an Answer to the Adversary Complaint, and ten (10) days from the entry of this Order in which to file a Notice of Appeal.

6. This Order modifies and supersedes the Order entered on April 24, 2003.

UNITED STATES BANKRUPTCY COURT
FOR THE EASTERN DISTRICT OF KENTUCKY
(Lexington Division)

IN RE: WALLACE'S BOOKSTORES, INC., et al.	CASE NO. 01-50545
DEBTORS	
BERNARD KATZ, LIQUIDATING SUPERVISOR FOR WALLACE'S BOOKSTORES, INC., et al.	PLAINTIFF
V.	ADV. NO. 03-5093
BLUE RIDGE COMMUNITY COLLEGE	DEFENDANT

ORDER MODIFYING ORDER DENYING DEFENDANT'S MOTION TO DISMISS

By Order of April 24, 2003, the Court overruled Defendant's Motion to Dismiss raising the sovereign immunity of the Commonwealth of Virginia, and required Defendant to file its answer to the Complaint within ten days thereafter. The Defendant moved for relief from the requirement that it make answer to the Complaint, provided that it appealed from the denial of its Motion to Dismiss within the permitted time. The Court having heard the arguments of the parties on May 15, 2003, and being otherwise sufficiently advised,

IT IS HEREBY ORDERED AND ADJUDGED that Defendant's Motion is sustained to the extent that the Defendant is granted an extension of time in which to file an Answer, but is otherwise overruled. The Court's Order of April 24, 2003 is hereby modified as follows:

1. This is a core proceeding and this Court has jurisdiction to enter this Order pursuant to 28 U.S.C. §§ 157 and 1334.

2. Congress, through its enactment of 11 U.S.C. § 106(a), expressly and within its Constitutional authority, abrogated the states' Eleventh Amendment immunity.

3. Defendant's Motion to Dismiss is hereby DENIED.

4. This is a final and appealable Order.

5. Defendant will [sic] fifteen (15) days from the date of entry of this Order in which to file an Answer to the Adversary Complaint, and ten (10) days from the entry of this Order in which to file a Notice of Appeal.

6. This Order modifies and supersedes the Order entered on April 24, 2003.

UNITED STATES BANKRUPTCY COURT
FOR THE EASTERN DISTRICT OF KENTUCKY
(Lexington Division)

IN RE: WALLACE'S BOOKSTORES, INC., et al.	CASE NO. 01-50545
DEBTORS	
BERNARD KATZ, LIQUIDATING SUPERVISOR FOR WALLACE'S BOOKSTORES, INC., et al.	PLAINTIFF
V.	ADV. NO. 03-5093 41
NEW RIVER COMMUNITY COLLEGE	DEFENDANT

ORDER MODIFYING ORDER DENYING DEFENDANT'S MOTION TO DISMISS

By Order of April 24, 2003, the Court overruled Defendant's Motion to Dismiss raising the sovereign immunity of the Commonwealth of Virginia, and required Defendant to file its answer to the Complaint within ten days thereafter. The Defendant moved for relief from the requirement that it make answer to the Complaint, provided that it appealed from the denial of its Motion to Dismiss within the permitted time. The Court having heard the arguments of the parties on May 15, 2003, and being otherwise sufficiently advised,

IT IS HEREBY ORDERED AND ADJUDGED that Defendant's Motion is sustained to the extent that the Defendant is granted an extension of time in which to file an Answer, but is otherwise overruled. The Court's Order of April 24, 2003 is hereby modified as follows:

1. This is a core proceeding and this Court has jurisdiction to enter this Order pursuant to 28 U.S.C. §§ 157 and 1334.

2. Congress, through its enactment of 11 U.S.C. § 106(a), expressly and within its Constitutional authority, abrogated the states' Eleventh Amendment immunity.

3. Defendant's Motion to Dismiss is hereby DENIED.

4. This is a final and appealable Order.

5. Defendant will [sic] fifteen (15) days from the date of entry of this Order in which to file an Answer to the Adversary Complaint, and ten (10) days from the entry of this Order in which to file a Notice of Appeal.

6. This Order modifies and supersedes the Order entered on April 24, 2003.

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF KENTUCKY
LEXINGTON

CIVIL ACTION NO. 03-245-KSF*

IN RE
WALLACE'S BOOKSTORES,
INC., *et al.* DEBTORS
BANKRUPTCY CASE NO.
01-50545

CENTRAL VIRGINIA COMMUNITY COLLEGE APPELLANT

V.

ORDER

(Filed Aug. 6, 2003)

BERNARD KATZ, LIQUIDATING
SUPERVISOR FOR WALLACE'S
BOOKSTORES, INC., *et al.* APPELLEE

ADVERSARY PROCEEDING NO. 03-5081

* * *

This matter is before the Court on appeal from several orders of the United States Bankruptcy Court for the Eastern District of Kentucky in the underlying adversary proceedings in this consolidated action denying the

* This case has been consolidated with three related cases, with the present action as the lead case: *Virginia Military Institute v. Katz*, Civil Action No. 03-246-KSF (E.D. Ky.), *New River Community College v. Katz*, Civil Action No. 03-247-KSF (E.D. Ky.), and *Blue Ridge Community College v. Katz*, Civil Action No. 03-248-KSF (E.D. Ky.). For ease of reference, the Court will use the caption only for the lead action in its orders, although the orders apply equally to all parties in each of the consolidated cases.

appellants' motions to dismiss on the basis of sovereign immunity.

The appellants have sufficiently outlined the factual background and procedural history of these cases in their consolidated brief and, therefore, the Court will not repeat the same here. The constitutional issues raised by the appellants herein are identical to the issues raised by the appellants in *Hood v. Tennessee Student Assistance Corp.*, 319 F.3d 755 (6th Cir. 2003), *petition for cert. filed* No. 02-1606 (May 6, 2003). Thus, this Court must reject the appellants' appeal for the reasons set forth in the *Hood* decision and affirms the rulings of the bankruptcy court. Based on this, there is no need for the Court to address the argument of appellant Virginia Military Institute that the bankruptcy court erred in ruling that it had waived sovereign immunity by filing a proof of claim in the main bankruptcy case.

Accordingly, the Court, being otherwise fully and sufficiently advised, HEREBY ORDERS that

(1) the orders of the United States Bankruptcy Court for the Eastern District of Kentucky entered April 24, 2003, and May 19, 2003, are AFFIRMED; and

(2) judgment will be entered contemporaneously with this order.

This 5/day of August, 2003.

/s/ Karl S. Forester
KARL S. FORESTER,
CHIEF JUDGE

NOT RECOMMENDED FOR FULL-TEXT PUBLICATION

No. 03-6054

UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

In re: WALLACE'S BOOKSTORE, INC. and WALLACE'S BOOK COMPANY Debtors	)	
BERNARD KATZ, Liquidating Supervisor for Wallace's Bookstores, Inc., et al., Appellee, v. CENTRAL VIRGINIA COMMUNITY COLLEGE; VIRGINIA MILITARY INSTITUTE; NEW RIVER COMMUNITY COLLEGE; BLUE RIDGE COMMUNITY COLLEGE, Appellants.	)	ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF KENTUCKY (Filed Aug. 4, 2004)

Before: SUTTON and COOK, Circuit Judges; ROSEN, District Judge.*

* The Honorable Gerald E. Rosen, United States District Judge for the Eastern District of Michigan, sitting by designation.

PER CURIAM. Appellants, four state-supported institutions of higher education in Virginia, brought this suit for the purpose of challenging this court's decision in *Hood v. Tennessee Student Assistance Corporation*, 319 F.3d 755 (6th Cir. 2003) (holding that the Article I Bankruptcy Clause grants Congress the authority to abrogate states' sovereign immunity), *aff'd on other grounds*, 124 S. Ct. 45 (2004). The district court, finding that appellants raised the very arguments that this court rejected in *Hood*, affirmed the orders of the bankruptcy court. Because we are bound to follow a decision of a prior panel, *see Moltan Co. v. Eagle-Picher Indus., Inc.*, 55 F.3d 1171, 1176 (6th Cir. 1995) ("We cannot overturn the prior published decision of another panel and are therefore bound by these previous decisions."), and because the parties agree that *Hood* applies here, we affirm the judgment of the district court.

No. 03-6054

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

N RE: WALLACE'S BOOKSTORE, INC. AND WALLACE'S BOOK COMPANY, Debtors.	)	ORDER (Filed Sep. 30, 2004)
BERNARD KATZ, LIQUIDATING SUPERVISOR FOR WALLACE'S BOOKSTORES, INC., ET AL., Appellee, v. CENTRAL VIRGINIA COMMUNITY COLLEGE, ET AL., Appellants.	)	

BEFORE: SUTTON and COOK, Circuit Judges; and ROSEN,* District Judge.

The court having received a petition for rehearing en banc, and the petition having been circulated not only to the original panel members but also to all other active judges of this court, and no judge of this court having requested a vote on the suggestion for rehearing en banc, the petition for rehearing has been referred to the original panel.

* Hon. Gerald E. Rosen, United States District Judge for the Eastern District of Michigan, sitting by designation.

The panel has further reviewed the petition for rehearing and concludes that the issues raised in the petition were fully considered upon the original submission and decision of the case. Accordingly, the petition is denied.

ENTERED BY ORDER
OF THE COURT

/s/ Leonard Green
Leonard Green, Clerk